

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEFISSA KRAIEM, : Case No.: 19-cv-5160

Plaintiff, :

v. :

JONESTRADING INSTITUTIONAL : New York, New York

SERVICES, et al., : October 27, 2023

Defendants. :

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TRANSCRIPT AND STATUS CONFERENCE HEARING
BEFORE THE HONORABLE STEWART D. AARON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: STULBERG & WALSH LLP
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1 THE COURT: Good morning. This is
2 Magistrate Judge Aaron. This is the matter of
3 Kraiem Against JonesTrading Institutional Services,
4 LLC; 19cv5160. This line is being recorded.

5 I'd like to have the parties identify
6 themselves please for the record, starting with
7 counsel for the plaintiff.

8 MR. STULBERG: Thank you, Your Honor. Good
9 morning. Robert B. Stulberg of the firm Stulberg &
10 Walsh, counsel of record, and my associate, James
11 deBoer, who will be arguing the letter motion.

12 MR. LEWKOWICZ: Thank you. My name is
13 Daniel Lewkowicz, and I'm counsel at Kaufman,
14 Borgeest & Ryan, and we are representing the
15 defendants in this matter.

16 THE COURT: All right. And did you
17 indicate you had somebody else on the line with you,
18 or am I mistaken?

19 MR. LEWKOWICZ: No, no, just -- just I will
20 be appearing.

21 THE COURT: Okay. So I had a few questions
22 before I turn the floor over to the parties to make
23 whatever additional points they wish to make that
24 are independent of the letter submissions that were
25 made. So this question is for the defense side.

1 In the letter response that was filed on
2 October 25th, at ECF 173, in footnote 2, I'm reading
3 what it states: "Defendants have communicated to
4 plaintiff that they are amenable to expanding the
5 period for discoverable documents through
6 plaintiff's end of employment (through January 15,
7 2018)."

8 Have you done that, or that's just
9 something that you offered?

10 MR. LEWKOWICZ: So we've had numerous
11 discussions about the potential scope. Originally I
12 articulated our position that we believe this really
13 should be narrowed to when the plaintiff actually
14 left the United States and after the events
15 occurred. And so I've communicated that we'd be
16 willing to produce documents through January 15,
17 2018. And, in fact, unilaterally, we did produce
18 documents through January 15, 2018, which was when
19 her termination ended with JTIL in the United
20 Kingdom.

21 THE COURT: So the short answer to my
22 question is that you've already produced those
23 documents?

24 MR. LEWKOWICZ: Yes.

25 THE COURT: Okay. Give me a second.

1 My next question relates to -- let's see.
2 So in plaintiff's reply that was filed -- please let
3 me find it here -- at ECF 176 early this morning, it
4 states at page three, and I'm quoting, "Defendants
5 represent that they have separately already produced
6 all documents containing plaintiff's name."

7 And my question for the defendants, is that
8 true?

9 MR. LEWKOWICZ: So not outside the time
10 frame that we believe should be -- that the -- that
11 the discovery should be limited to.

12 THE COURT: But --

13 MR. LEWKOWICZ: Included in our --

14 THE COURT: Go ahead.

15 MR. LEWKOWICZ: Included in our previous
16 productions were documents that would have
17 referenced any version of the names that were
18 provided by plaintiffs. So "Nef," "Nefissa,"
19 "Nefissa SK," "Nefissa SK" with an extension.
20 "Nefissa Soraya Kraiem," "NK". So any of those we
21 produced.

22 THE COURT: All right. So in plaintiff's
23 reply that is filed at ECF 176, on pages two and
24 three, appear hit counts for certain terms. And,
25 for example, the term "ass," A-S-S, it says 67. And

1 that number appears to the Court to come from
2 Exhibit B to defendant's September 13, 2023 letter
3 that was filed at ECF 171-10 on page eight. Those
4 numbers match up.

5 Now, when I look at that exhibit, there's a
6 footnote 13 on PDF page eight, which appears -- at
7 the top it says -- of Exhibit B, 171-10 PDF page
8 eight it says, "keyword". There's footnote 13. At
9 the bottom it says, (narrowed by) "AND," and then
10 the various permutations you just mentioned,
11 "Kraiem" or "Nef" or "Nefissa," et cetera.

12 If you've already produced documents
13 containing her name, then everything you have listed
14 here already would have been produced. Or am I
15 missing something?

16 MR. LEWKOWICZ: So this proposal was for --
17 these were the hit counts for documents that dated
18 all the way to, I believe, January 2017, right. So
19 these are more documents than we were necessarily
20 agreeing to, because in our objections we said we
21 believe the time period should be limited. But
22 based on a broader time frame, these are the number
23 of document hit counts we're receiving. So I don't
24 believe --

25 THE COURT: All right. So you have to tell

1 me what time period these keywords related to.

2 MR. LEWKOWICZ: Right. These exhibits, I
3 believe, would have been all hit counts for January
4 2017 through January -- through actually March 2018.
5 So slightly larger. But these were the hit counts
6 we had when we asked our vendor to tell us how many
7 times the word "ass" would appear in connection with
8 these particular names or perceived names for
9 plaintiff.

10 THE COURT: All right. And have you -- so
11 there's overlap then, right?

12 MR. LEWKOWICZ: Yes.

13 THE COURT: So some of these documents
14 already would have been produced?

15 MR. LEWKOWICZ: Yes.

16 THE COURT: All right. And in terms of
17 what you have uploaded already with your vendor to
18 the document review platform, do you have documents
19 dating back -- ESI dating back to May 25, 2016,
20 which is the date that this plaintiff started
21 working in the UK?

22 MR. LEWKOWICZ: Yes.

23 THE COURT: And do you already have
24 uploaded to the ECF -- excuse me, the ESI review
25 platform just documents going through January 15 of

1 2018, which is the date that her employment ended?

2 MR. LEWKOWICZ: Yes.

3 THE COURT: Okay. All right. Just give me
4 a second. Just writing some notes.

5 And one point of clarification in footnote
6 13 in ECF 171-10. That's the letter that I
7 mentioned back from September. There's a hyphen
8 between the search term "Nefissa-SK". There's a
9 hyphen between "Nefissa" and "SK". But in the
10 letter that you filed at ECF 173, your response
11 letter page three, there is no hyphen. It would
12 make sense to me that there shouldn't be a hyphen,
13 because that wouldn't -- but I just wanted to make
14 sure.

15 MR. LEWKOWICZ: Sure. I can double check
16 what the actual -- I may not have that exact thing
17 in front of me, whether -- I don't believe there was
18 a hyphen in what was actually applied by the vendor,
19 but I can always double check and let the Court
20 know.

21 THE COURT: All right. Just give me a sec.
22 So a question for plaintiff's counsel.
23 Have any depositions been taken in this case?

24 MR. deBOER: Not yet, Your Honor. We have
25 scheduled depositions with defendants.

1 THE COURT: Those are the ones that are set
2 forth in the letter filed yesterday evening?

3 MR. deBOER: Yes, that's correct, Your
4 Honor.

5 THE COURT: Okay. All right. Those were
6 all the questions that I had for now. I'm happy to
7 hear. So keeping in mind that I've reviewed the
8 parties' submissions, I'm happy to hear whatever
9 else the parties wish to say about the pending
10 letter of motion. So I'll start with plaintiff's
11 counsel.

12 MR. deBOER: Thank you very much, Your
13 Honor.

14 I wanted to highlight the ruling that Judge
15 Carter made on January 24, 2022, in which he
16 denied --

17 THE COURT: Do you mean 2022 or -- just
18 want to make sure I have the year right.

19 MR. deBOER: Yes, that's correct. And I
20 can give you the docket number as well, Your Honor,
21 for that. That is docket 145.

22 THE COURT: Okay. So you're not referring
23 to the first decision that he rendered, which was
24 back in September of 2020. You're talking about his
25 ruling from January of 2022, okay.

1 MR. deBOER: Yes, that's correct. I
2 believe we might have referenced the earlier ruling
3 at some juncture relating to the criteria for joint
4 employer factors.

5 In the January of 2022 ruling, Judge Carter
6 held that numerous paragraphs of plaintiff's
7 complaint should not be struck because, I quote,
8 "they offer relevant context of the actionable
9 claims in this case."

10 So Judge Carter already held that
11 paragraphs in the complaint describing activities of
12 a harassing nature that plaintiff experienced prior
13 to April 27, 2017, are relevant for understanding
14 the allegations, the operative allegations in the
15 complaint.

16 So our position is we do not see any reason
17 for why defendants would limit the period of
18 discovery to April 27th to January 15th of 2018.
19 Because, as Judge Carter will -- incidents that
20 happened before then, names that plaintiff was
21 called that happened before then are relevant. And
22 they're relevant whether people, Jones managers and
23 supervisors called her those sexist terms to her
24 face, or as the Second Circuit has held in *Torres v.*
25 *Pisano* at 116 F.3d 625 at 633.

1 The fact that statements might not have
2 been made to her face but behind her back are also
3 relevant for establishing discrimination claim. So
4 the time frame should not be unduly narrowed, nor
5 should the search terms be restricted to terms that
6 already contain plaintiff's name. Because, as the
7 defendants have explained, they have agreed to
8 produce documents with plaintiff's name from the
9 period. And I do apologize that might not have been
10 the clearest that it could have been in our
11 submission. But from April 27, 2017 through January
12 15, 2018, all documents containing plaintiff's name.

13 Well, there are a number of instances, and
14 I'd have to go back and confirm if we have the
15 correct numbers, but there's a number of instances
16 in which plaintiff is referred to by a term, but her
17 name does not appear in the document.

18 An example of that is included as Exhibit
19 12, where plaintiff's supervisor, Gary Cunningham,
20 refers to the plaintiff as "Princess" and doesn't
21 have any mention of her name. So this indicates
22 that management is calling her names, derogatory,
23 sexist names behind her back in documents that do
24 not also contain her name.

25 So that restriction does not hold water

1 because, in fact, documents referring to plaintiff
2 by a derogatory term without her name might be very
3 probative of the mentality of plaintiff's managers
4 and supervisors at Jones and the individual
5 defendants.

6 THE COURT: A question for you. So I see
7 this document you're referring to is attached to
8 your reply. What search term, or how was this
9 document obtained? Why is it that this document was
10 produced; do you know?

11 MR. deBOER: Yes, Your Honor. Defendants
12 did agree to produce documents containing a small
13 handful of terms that do not also contain
14 plaintiff's name, so I could tell you what those
15 terms are. "Princess" was one of them. I'm sorry.

16 THE COURT: So they did agree to produce
17 "Princess"?

18 MR. deBOER: Yes, that's correct.

19 THE COURT: So this example of what they
20 were referring to your client as, they've already
21 produced "Princess"?

22 MR. deBOER: Yes, that's correct. So
23 they've produced "Princess". They haven't produced
24 the word -- I'm going to spell it out just to avoid
25 impropriety -- but B-I-T-C-H, which is a word that

1 plaintiff has informed us she believes she was
2 called by management. But we don't have documents
3 in which that word appears, but not plaintiff's
4 name.

5 THE COURT: Well, if one is speaking in a
6 derogatory manner about someone, was there more than
7 one woman who worked at this entity in the United
8 Kingdom or in the United States?

9 MR. deBOER: There are very few, Your
10 Honor. Plaintiff was the only female trader at the
11 London office. There were, I believe, three out of
12 maybe 100 female traders in other locations at.
13 Jones.

14 THE COURT: Okay. But my point is, put
15 aside traders, there'd be any number of people who
16 inappropriately used that phrase if these folks
17 threw that phrase around. That's my only point.
18 Whereas, someone who's a "Princess" presumably
19 refers to a single person. But maybe I'm wrong.

20 MR. deBOER: Well, Your Honor, our position
21 is we're entitled to documents in which defendants
22 are referring to plaintiff by derogatory terms,
23 whether or not her name is included. If there are
24 documents --

25 THE COURT: I know, but the problem that

1 you have is, if you want them to search all their
2 e-mails for the word B-I-T-C-H, that doesn't seem to
3 me to be proportional to the needs of the case, but
4 okay, I hear your point. I hear your argument. You
5 can continue.

6 MR. STULBERG: Your Honor, Robert Stulberg.
7 I just wanted to --

8 THE COURT: Mr. Stulberg, obviously I'm
9 happy to hear from you, but -- go ahead, I didn't
10 know it was going to be double-teamed. Go ahead.

11 MR. STULBERG: I will not say anything if
12 Your Honor prefers.

13 THE COURT: No, go ahead. You want to make
14 a point about the B-I-T-C-H word? Proceed.

15 MR. STULBERG: Yes. The relevance of that
16 word and a number of others quite like it to this
17 case is, not only that they were used to refer to
18 our client, but that they were used in the
19 workplace, characterized women in general.

20 And our contention is that our client has
21 been or was subjected to a hostile work environment.
22 And the use of those types of terms in the middle of
23 a workplace are obviously hostile to women. So I
24 just wanted to mention that, lest these words be
25 viewed as relevant only with respect to Nefissa

1 Kraiem.

2 THE COURT: No, but look, here's what the
3 issue is. The issue is you're not representing
4 women in a class action against the joint employers
5 here, the alleged joint employers.

6 You have a client who claims that certain
7 incidents occurred here in the United States that
8 are actionable. In April in Texas, in May in
9 Connecticut and in July, all of 2017 in New York
10 City. And sexual harassment or a hostile work
11 environment writ large of the entire organization,
12 you conducting discovery class-wide, for lack of a
13 better term, doesn't seem to me to be proportional
14 to the needs of the case.

15 But look, I hear your argument, and I'm
16 ready to hear what additional arguments you have.

17 MR. STULBERG: Thank you, Your Honor. I
18 turn it back to Mr. deBoer.

19 MR. deBOER: Yes, thank you, Your Honor.
20 And I do see now, I'm referring to Exhibit 6, which
21 is the July 20, 2023 letter from defendants. And
22 this letter also contains tallies of search terms.

23 THE COURT: Could you give me an ECF
24 number? Sorry, just while following along.

25 MR. deBOER: Yes, I beg your pardon, Your

1 Honor. So this is going to be document 171, and
2 then it's Exhibit 6 of that submission.

3 THE COURT: Okay. So hold on. I'm just
4 clicking it. So it's 171-6?

5 MR. deBOER: Yes, I believe so.

6 THE COURT: Okay. And this is a July 20
7 letter? That's what you're referring to?

8 MR. deBOER: Yes, Your Honor.

9 THE COURT: And what page? I'm sorry.

10 MR. deBOER: And now I'm on page two of
11 that letter.

12 THE COURT: Okay. I'm there.

13 MR. deBOER: And I'm looking at the second
14 to last line where there's a tally for how many
15 times the word that we're seeking occurs.

16 THE COURT: Yeah, that's not this letter
17 because this letter on page two is -- talks about
18 interrogatories.

19 What oftentimes happens is the numbers
20 don't line up with the 171-6, you know what I mean?
21 It doesn't line up with exhibit numbers. So let me
22 go to the --

23 MR. deBOER: Yeah, there were a couple of
24 things on the same date.

25 THE COURT: So are you at your computer to

1 tell me what -- oh, maybe it's seven. Seven says,
2 defendant's tally of search term results.

3 MR. deBOER: Yes, Your Honor. That's the
4 one.

5 THE COURT: Okay. All right. I've clicked
6 on that. Hold on.

7 Okay. So you're at the bottom of which
8 page?

9 MR. deBOER: Page two.

10 THE COURT: Okay. I'm there. I see a list
11 of search term hits. Family action note.

12 Okay. Which one are you calling to my
13 attention?

14 MR. deBOER: Still on the B-I-T-C-H, and
15 there's 74 hits and 83 in the family.

16 THE COURT: Okay.

17 MR. deBOER: And this section is reflecting
18 the tally for the search results for one group of
19 custodians. And then on page eight there's another
20 tally reflecting the number of results for a
21 different set of custodians. And on the other page
22 that same word appears -- this is page eight --
23 appears on about the 10th line, 12th line.

24 THE COURT: Okay.

25 MR. deBOER: So the point I'm making here

1 is that there are certain terms that we realize are
2 going to be voluminous, but there are other terms
3 that certainly are not going to be voluminous and
4 would be very much proportional to the needs of the
5 case, especially given plaintiff's understanding
6 that she's been called these terms.

7 THE COURT: Okay.

8 MR. deBOER: Thank you, Your Honor.

9 The other point that I'd like to make on
10 this topic is certain requests that we've made for
11 documents that defendants have denied altogether.
12 And these are requests 11 and 12, which seek
13 documents relating to use and abuse of controlled
14 substances at Jones. And then request 16 for all
15 JonesTrading International Limited employment
16 contracts, which would be relevant to demonstrating
17 the joint employer factors, which includes
18 centralized control of labor relations. And then
19 documents 50 through 52, which pertain to --
20 document request 50 to 52 pertain to Mary Moser, who
21 was -- I'm not quite sure her title, but she was
22 acting as human resources director for both JTIS and
23 JTIL during all relevant times.

24 And our last point that we do discuss in
25 the response is that other complaints of harassment

1 are highly relevant, as many Courts have found, to
2 establishing the likelihood of plaintiff's
3 allegations. And courts routinely extend the period
4 for which those complaints are discoverable beyond
5 the time of the plaintiff's employment.

6 So for that reason, defendant's limitation
7 from April 27 through January 15 -- April 27, 2017,
8 through January 25, 2018, is unwarranted.

9 THE COURT: All right.

10 MR. deBOER: If Your Honor has any further
11 questions, I'd be happy to assist as I'm able.

12 THE COURT: Yeah, I don't at the moment.

13 Let me hear from defense counsel
14 recognizing that I've read all the submissions, but
15 go ahead.

16 MR. LEWKOWICZ: Thank you, Your Honor. I
17 don't want to belabor the point. And especially
18 since you've read all the submissions.

19 I feel there's an element of nitpicking
20 that's taking place here as to particular words that
21 the party believes are only coming up in narrow
22 hits, but still may not be relevant because a
23 person, for example, may say "that person is
24 bitching about this," as opposed to referring to the
25 plaintiff in any way as "a bitch". And so narrowing

1 it by search parameters, we believe, is a very
2 valuable way to get to only relevant documents as
3 opposed to any document that may exist across 25
4 custodians, across 23 offices, across the whole
5 institution.

6 These documents are not just emails, but
7 also Bloomberg instant chats, where people are
8 engaging in very long conversations that may
9 periodically be talking about family relations,
10 conversations they had with clients, things wholly
11 unrelated to this case, to the plaintiff or to just
12 anything that occurred here. Some of these are even
13 just news articles that come up. And these words
14 appearing, for example, even though we provided the
15 word -- documents with the word "Princess" in it
16 because it was a very specific reference that
17 plaintiff's counsel identified for us. You know,
18 the word "Princess" appears in conversations when
19 people are talking about bringing their children to
20 Disneyland. Lion King in referring to actually
21 going to the play, Lion King.

22 So that's why these documents, without any
23 search parameters become extremely voluminous in
24 nature. And our proposal was really referencing the
25 narrowing of search terms by search parameters to

1 get even this voluminous number of documents. But
2 if you look at the word "entertainment," for
3 example, in Exhibit B to our proposal to plaintiff
4 on September 13, that still produces 960 documents.
5 If we actually look at what that word would produce
6 without any narrowing, we're getting over 6,500
7 hits. And we find that for many of the very broad
8 words that are referred to.

9 That is also one of the problems with,
10 aside from our objection as to just broadly
11 searching for any reference to anything that might
12 have to do with any potential drug, alcohol or kind
13 of these bizarre allegations about sex workers, they
14 include the word "green" in their keywords. I
15 presume "green" is a reference to marijuana, but the
16 word "green" has a hit count, just a hit count of
17 over 16,600 documents.

18 And then with "family," which we're
19 required to -- we would be required to review,
20 elevates almost to 36,000 hits. I mean this is --
21 given especially what we've produced to date, this
22 is just in no way proportionate to the needs of this
23 case, especially in light of the fact that we're
24 really talking about, at best, eight days that the
25 plaintiff spent for the entire year of her

1 employment with JTIL in the United States
2 whatsoever. To broaden the period beyond not only
3 these eight days, but beyond her period of
4 employment, it just -- it seems like it's a fishing
5 expedition. And as we stated in our submission, it
6 seems almost harassing. It would cost us an
7 exorbitant amount of money to review these documents
8 for privilege, for relevancy.

9 And then presumably, even if we were to
10 provide these documents, we would receive more
11 requests from plaintiff's counsel. To date, we have
12 not had really a response to our proposal from
13 plaintiff that in any way seems to be working
14 collaboratively with us to find a way to narrow the
15 number of documents that they're seeking. It really
16 seems like they're looking broadly for just about
17 anything that might have occurred at any one of our
18 offices, even ones that plaintiff had never worked
19 across, been in, you know, whatsoever.

20 That being said, we've communicated to
21 plaintiff's counsel that we had HR specifically look
22 for documents related to the joint employer
23 allegations, and that we collected and produced and
24 provided debate numbers for organizational charts
25 for JTIL and JTIS, documents related to labor

1 relations, management and ownership data. And that
2 was all produced. And we told them that we don't
3 have more relevant documents in that regard. They
4 also have all the communications that may have
5 occurred between Mary Moser, who was a consultant,
6 not an employee at the time, and thus doesn't have a
7 personnel file, and those communications and
8 interactions have already been provided.

9 Further, we've also communicated that HR
10 confirmed to us that there are no complaints that we
11 have about harassing, abusive, discriminatory
12 conduct that occurred at -- or otherwise at JTIS, or
13 relate to any of the individual defendants in the
14 case. And that was communicated.

15 So, you know, these ESI terms are really
16 just meant to be a backup to our obligation to find
17 relevant documents. And they really need to be
18 tailored in a way that ensure that only relevant
19 documents are identified, especially given the fact
20 that this case is far narrower than maybe other
21 employment-related disputes that are being referred
22 to in cases cited by opposing counsel.

23 So unless you have any questions for me,
24 that's pretty much our position on this.

25 THE COURT: All right. I don't.

1 Any final comment by plaintiff's counsel?

2 MR. deBOER: Yes, Your Honor.

3 Defendant's counsel just stated that
4 they've given us, produced to us a number of joint
5 employer-related documents and other complaints
6 about -- that other people have lodged with Jones of
7 abusive or harassing nature.

8 THE COURT: Well, to be clear, what I heard
9 him say is that there weren't complaints about the
10 latter and that he had produced the former.

11 MR. deBOER: Yes, Your Honor. The one
12 complaint was plaintiff's own complaint that we've
13 received. That, I believe -- although I'd be happy
14 to be mistaken, but I believe that that is still
15 narrowed to the period for all of the above, April
16 27, 2017 through January 15, 2018, which for the
17 reasons that I mentioned earlier, is an
18 inappropriate limitation.

19 THE COURT: Okay.

20 MR. deBOER: And just to reiterate, the
21 defendant's contention that the facts of the
22 operative allegations of this case being limited to
23 eight days, again, ignores the earlier ruling by
24 Judge Carter that the context is relevant, and
25 therefore, provides important background information

1 to understand what exactly happened in those eight
2 days, and why a reasonable woman would have
3 experienced the harassment, the sexual bullying in
4 the way that plaintiff did as harassing events.

5 THE COURT: All right.

6 MR. LEWKOWICZ: Your Honor, if I may, on
7 just one small point as far as providing context.

8 THE COURT: Very briefly.

9 MR. LEWKOWICZ: Very briefly.

10 On August 4, we provided back to plaintiff,
11 all of the documents we have in our possession that
12 relate to any of the claims, assertions or
13 proceedings that occurred in the United Kingdom,
14 which may also include some of these context-based
15 documents that they say they need now. But many of
16 these documents have already been exchanged by the
17 parties during a very long protracted dispute that
18 has already been dropped with prejudice in the
19 United Kingdom.

20 THE COURT: All right. Here's my ruling:

21 The Court has great familiarity with this
22 case, which was filed over four years ago in May
23 2019. The central allegations made by plaintiff in
24 this case are that she suffered harassment and
25 retaliation as a result of the incidents that

1 occurred in Dallas, Texas in April 2017; Greenwich,
2 Connecticut in May 2017; and in New York City from
3 July 10 to July 16, 2017.

4 Following the filing of an amended pleading
5 by plaintiff in December of 2019, District Judge
6 Carter in September 2020 granted in part and denied
7 in part a motion to dismiss that was filed by
8 defendants; see *Kraiem against JonesTrading*, 492
9 F.Supp. 3d 184 out of the Southern District of New
10 York, obviously in 2020.

11 On November 17, 2020, plaintiff filed her
12 second amended complaint at ECF 81. In an order
13 dated December 2, 2020, Judge Carter stated that it
14 was not apparent from the pleading that was filed
15 that his limited permission regarding an amended
16 pleading was complied with and granted plaintiff
17 leave to file a motion to amend in support of making
18 the second amended complaint that was on file
19 operative. I'm referring to Judge Carter's December
20 2, 2020 order filed at ECF 83.

21 On December 31, 2020, plaintiff filed her
22 motion to amend at ECF 87. In an opinion and order
23 dated May 26, 2021, Judge Carter granted in part and
24 denied in part plaintiff's motion. That's *Kraiem*,
25 2021 Westlaw 2134818 decided, again, May 26, 2021.

1 On August 5, 2021, plaintiff filed a motion
2 to supplement her pleading. Judge Carter thereafter
3 referred that motion to me. In an opinion and order
4 dated November 12, 2021, I denied plaintiff's motion
5 to supplement. That's 571 F. Supp 3d, page 53.

6 After some further litigation regarding
7 plaintiff's pleading, plaintiff filed on January 24,
8 2022, a document she entitled as her Second Amended
9 Complaint at ECF 146. That's the operative pleading
10 at the moment.

11 The Court notes that during the period May
12 2019 to January 2022, the ECF docket reflects that
13 no stay of discovery had been issued by the Court.
14 The ECF docket then reflects no activity between
15 March of 2022, when defendants filed their answer
16 until February of 2023, when the Court directed that
17 a status report be filed. During this entire
18 period, plaintiff could have and should have been
19 conducting discovery.

20 On February 10, 2023, the Court entered an
21 order setting the fact-discovery deadline as June
22 30, 2023 and the expert discovery deadline as July
23 31, 2023. That's ECF 153. The Court's order
24 stated, I'm quoting, "The foregoing deadlines may be
25 extended only for good cause shown, and then any

1 extensions will be granted only for a limited
2 purpose."

3 On March 31, 2023, the parties filed a
4 joint letter as required, stating that discovery was
5 ongoing. That's ECF 155. On May 2, 2023, the
6 parties requested, and on May 3, the Court granted
7 an extension of the fact-discovery deadline until
8 August 29, 2023, and an extension of the expert
9 discovery deadline until September 29, 2023. That's
10 ECF 158.

11 The letter seeking the extension mentioned
12 the various unfortunate family emergencies that
13 Attorney Stulberg was encountering at that time.

14 On May 19, 2023, the next joint discovery
15 status letter was filed, which the Court endorsed on
16 May 22. The Court's endorsement stated in relevant
17 part, and I'm quoting, "The Court expects the
18 parties to work diligently to meet discovery
19 deadlines." That's ECF 161.

20 On July 29, 2023, the Court granted the
21 latest discovery extension, stating, "Fact discovery
22 shall be completed by 10-31-2023, and expert
23 discovery shall be completed by 12-1-2023." And the
24 order continues, "No further extensions shall be
25 granted absent exigent circumstances. And if any

1 further extensions are granted, they shall be for
2 limited specific purposes." That's ECF 168.

3 On September 28, 2023, more than one month
4 prior to the expiration of the fact-discovery
5 deadline, plaintiff filed another letter seeking a
6 discovery extension, which the Court denied without
7 prejudice, while noting the fact discovery did not
8 close until October 31, 2023. That's ECF 170.

9 On October 23, 2023, eight days before the
10 current fact-discovery deadline, plaintiff filed a
11 letter motion that is now before the Court seeking
12 to compel production of documents. That's ECF 171.

13 Together with exhibits, plaintiff's letter
14 motion consists of 175 pages. Defendants filed a
15 letter in response on October 25. That's ECF 173,
16 and plaintiff filed a reply very early this morning
17 at ECF 176.

18 In addition, yesterday evening the parties
19 filed yet another letter seeking -- letter motion
20 seeking the extension of discovery deadlines. ECF
21 175. That brings us up to date and informs the
22 Court on its decision on the plaintiff's motion to
23 compel.

24 Under Rule 26(b)(1), parties may obtain
25 discovery regarding any non-privileged matter that

1 is relevant to any party's claim or defense, and
2 proportional to the needs of the case. Considering
3 the importance of the issues at stake in this
4 action, the amount in controversy, the parties'
5 relative access to relevant information, the
6 parties' resources, the importance of the discovery
7 in resolving the issues, and whether the burden or
8 expense of the proposed discovery outweighs its
9 likely benefit.

10 The Court is vested with discretion in
11 determining what is proportional to the needs of the
12 case. At this late stage of the discovery process,
13 in a four-year old case, the Court only shall order
14 production of documents it finds important the
15 limited issues at stake in this case.

16 The Court thus rules in its discretion as
17 follows:

18 One -- and I'll be issuing a written order
19 setting forth the operative portions of what I'm
20 about to say so that it'll be crystal clear.
21 Anybody obviously can order this entire transcript,
22 should they choose to do so.

23 The Court is ordering as follows:

24 One, within 14 days, to the extent not
25 already produced, defendant shall produce responsive

1 documents for the time period May 25, 2016 through
2 January 15, 2018, using the search terms that are
3 set forth in pages two and three of plaintiff's
4 reply filed at ECF, Number 176 (is narrowed by)
5 "AND" in block caps (Kraiem) or (Nef) or (Nefissa)
6 or (Nefissa SK) or (Nefissa SK*) or (Nefissa-SK*) or
7 "Nefissa Soraya Kraiem" or "NK," but excluding the
8 terms, "beauty" and "girl". The hit counts I found
9 to be too high on those. And since I'm making them
10 go back earlier in time, I don't find it
11 proportional to the needs of the case to include the
12 terms, "beauty" and "girl".

13 The purpose of the Court's ruling here is
14 to capture documents that related to this plaintiff
15 that were prior to the date that she came to the
16 United States to give the context. However, the
17 Court finds it is not appropriate to just search for
18 terms like B-I-T-C-H throughout the entire
19 organization for the period prior to that time.

20 The documents in the Court's discretion --
21 the important documents are the ones that make
22 reference to the plaintiff.

23 Second, with respect to the so-called joint
24 employer status of JTIS and JTIL, the Court finds
25 that the documents sought by plaintiff are not

1 proportional to the needs of the case.

2 However, plaintiff may ask questions to the
3 defendant's Rule 30(b)(6) designee, regarding the
4 joint employer issue.

5 Third, in all other respects, plaintiff's
6 motion to compel is denied, and the parties are
7 directed to proceed with the depositions referred to
8 in ECF Number 175.

9 Now, look, the Court empathizes with
10 Attorney Stulberg's family and personal medical
11 situation, and my heart goes out to you; however,
12 your law firm website lists five other attorneys in
13 your firm in addition to Attorney deBoer, who is on
14 this call and who is also counsel of record in this
15 case. And I am to bring discovery to a close, and
16 that's what I intend to do.

17 Thus, the Court will extend discovery
18 deadlines one last time, but not as long as been
19 requested in the letter filed yesterday evening. At
20 the end of September, plaintiff requested a 60-day
21 extension of discovery deadlines, that is, until
22 December 31. Now plaintiff is asking for an
23 extension until January 15, 2024.

24 The Court would have expected the plaintiff
25 to request a shorter, not a longer discovery

1 extension after an additional month had gone by.

2 The Court -- and I might add reluctantly,
3 extends fact discovery to January 3, 2024 and the
4 deadline for expert discovery until February 5,
5 2024. Those are the dates when all court-sanctioned
6 discovery shall be completed.

7 You folks want to conduct additional
8 discovery between yourselves, have at it. But any
9 discovery that's going to be authorized by the Court
10 and under the Court's supervision is going to be
11 done by these dates.

12 The Court will be entering an order
13 following the conference, granting a part and
14 denying a part the letter motions filed at ECF 171
15 and 175, as previously stated during this
16 conference.

17 Anything else from either side?

18 MR. STULBERG: Your Honor, Robert Stulberg.
19 I just wish to thank the Court for its ongoing
20 expressions of understanding of my family situation.
21 And we very much appreciate the courtesies that have
22 been extended by the Court over the course of this
23 last year.

24 THE COURT: All right. Noted.

25 Anything from the defense side?

1 MR. LEWKOWICZ: No.

2 MR. deBOER: That is all.

3 MR. LEWKOWICZ: Thank you so much, Your
4 Honor.

5 THE COURT: All right. This matters is
6 adjourned. Thank you.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Kraiem v. JonesTrading Institutional Services; Docket #19CV5160 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano
ADRIENNE M. MIGNANO, RPR

Date: November 7, 2023